

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

FINJAN SOFTWARE, LTD., an Israel corporation,

Plaintiff-Counterdefendant,

v.

C. A. No. 06-369 GMS

SECURE COMPUTING CORPORATION, a Delaware corporation; CYBERGUARD CORPORATION, a Delaware corporation, WEBWASHER AG, a German corporation and DOES 1 THROUGH 100,

Defendants-Counterclaimants.

**DEFENDANTS-COUNTERCLAIMANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO FED. R. CIV. P. 50**

Defendants-counterclaimants Secure Computing Corporation, Cyberguard Corporation, and Webwasher AG ("hereinafter Secure Computing") hereby move for judgment as a matter of law, pursuant to Federal Rule of Civil Procedure Rule 50, including Rule 50(a), as follows:

(1) Judgment as a matter of law that Secure Computing does not literally infringe, or infringe under the Doctrine of Equivalents, any asserted claim of United Stated Patent No. 6,092,194.

(2) Judgment as a matter of law that Secure Computing does not literally infringe, or infringe under the Doctrine of Equivalents, any asserted claim of United Stated Patent No. 6,804,780.

(3) Judgment as a matter of law that Secure Computing does not literally infringe, or infringe under the Doctrine of Equivalents, any asserted claim of United Stated Patent No. 7,058,822.

(4) Judgment as a matter of law that Finjan Software Ltd. has not proved, by clear and convincing evidence, that any infringement by Secure Computing was willful.

(5) Judgment as a matter of law that Finjan Software Ltd. has not proved, by a preponderance of the evidence, any damages.

(6) Judgment as a matter of law that Finjan has not proved that this is an exceptional case.

(7) Judgment as a matter of law that Secure Computing has proven by clear and convincing evidence that all asserted claims of U.S. Patent No. 6,092,194 are invalid because they are anticipated by prior art.

(8) Judgment as a matter of law that Secure Computing has proven by clear and convincing evidence that all asserted claims of U.S. Patent No. 6,804,780 are invalid because they are anticipated by prior art.

(9) Judgment as a matter of law that Secure Computing has proven by clear and convincing evidence that all asserted claims of U.S. Patent No. 7,058,822 are invalid because they are anticipated by prior art.

(10) Judgment as a matter of law that Secure Computing has proven by clear and convincing evidence that all asserted claims of U.S. Patent No. 6,092,194 are invalid because they are obvious in light of the prior art.

(11) Judgment as a matter of law that Secure Computing has proven by clear and convincing evidence that all asserted claims of U.S. Patent No. 6,804,780 are invalid because they are obvious in light of the prior art.

(12) Judgment as a matter of law that Secure Computing has proven by clear and convincing evidence that all asserted claims of U.S. Patent No. 7,058,822 are invalid because they are obvious in light of the prior art.

(13) Judgment as a matter of law that Secure Computing has proven by a preponderance of the evidence that Finjan literally infringes all of the asserted claims of U.S. Patent No. 7,185,361.

(14) Judgment as a matter of law that Secure Computing has proven by a preponderance of the evidence that Finjan literally infringes all of the asserted claims of U.S. Patent No. 6,357,010.

(15) Judgment as a matter of law that Secure Computing has proven by a preponderance of the evidence that Finjan has induced infringement of all of the asserted claims of U.S. Patent No. 7,185,361.

(16) Judgment as a matter of law that Finjan has failed to prove by clear and convincing evidence that the asserted claims of U.S. Patent No. 7,185,361 are invalid because they are anticipated by prior art.

(17) Judgment as a matter of law that Finjan has failed to prove by clear and convincing evidence that the asserted claims of U.S. Patent No. 6,357,010 are invalid because they are anticipated by prior art.

(18) Judgment as a matter of law that Finjan has failed to prove by clear and convincing evidence that the asserted claims of U.S. Patent No. 7,185,361 are invalid because they are obvious in light of the prior art.

(19) Judgment as a matter of law that Finjan has failed to prove by clear and convincing evidence that the asserted claims of U.S. Patent No. 6,357,010 are invalid because they are obvious in light of the prior art.

(20) Judgment as a matter of law that Secure Computing has proved by a preponderance of evidence, damages as a result of Finjan's infringement of U.S. Patent No. 7,185,361 and U.S. Patent No. 6,357,010.

(21) Judgment as a matter of law that Secure Computing has proved that this is an exceptional case.

(22) Judgment as a matter of law in favor of Secure Computing on any claim or defense in this matter, including but not limited to any claim on which Finjan has the burden of proof and on any defense asserted by Secure Computing, and on any claim on which Secure Computing has the burden of proof and on any defense asserted by Finjan.

Kelly E. Farnan

Fredrick L. Cottrell, III (#2555)

cottrell@rlf.com

Kelly E. Farnan (#4395)

farnan@rlf.com

Richards, Layton & Finger

One Rodney Square, P.O. Box 551

Wilmington, DE 19899

(302) 651-7700

*Attorneys For Defendants*

OF COUNSEL:

Ronald J. Schutz

Jake M. Holdreith

Christopher A. Seidl

Trevor J. Foster

Robins, Kaplan, Miller & Ciresi L.L.P.

2800 LaSalle Plaza

800 LaSalle Avenue

Minneapolis, MN 55402

Dated: March 12, 2008

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 12, 2008, I electronically filed the foregoing with the Clerk of Court using CM/ECF and caused the same to be served on the plaintiff at the addresses and in the manner indicated below:

**E-MAIL AND HAND DELIVERY**

Philip A. Rovner  
Potter Anderson & Corroon LLP  
1313 N. Market Street,  
Hercules Plaza, 6<sup>th</sup> Floor  
Wilmington, DE 19899-0951

I further certify that on March 12, 2008, the foregoing document was sent to the following non-registered participants in the manner indicated:

**E-MAIL and FEDERAL EXPRESS**

Paul J. Andre  
Lisa Kobialka  
King & Spalding, LLP  
1000 Bridge Parkway, Suite 100  
Redwood Shores, CA 94065

*Kelly E. Jurnan.*  
Kelly E. Jurnan (#4395)